

REMARKS

The following remarks are responsive to the outstanding Official Action dated August 17, 2006.

In the Official Action, Claim 85 is objected to because of an incorrect dependency. In response to this, Applicant has amended claim 85 thereby rendering the objection moot.

Claims 48-50, 52, 58, 63, 64, 69, 76, 77, 79-84, 89, and 91-95 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,270,277 to *Ogino et al.* In response to this rejection, Applicant has cancelled independent claim 48 as well as claims 49-57. Therefore, the only independent claims remaining are claims 58 and 86 of the present application. As previously stated, independent claim 58 has been rejected in view of *Ogino*. Claim 58 includes recitations previously included within claim 60 as well as that which was included in prior claim 58. However, a recitation directed toward the accessory being configured from removably fixing onto said neck of said receptacle by fastening only on the first fixing means has been stricken from claim 58. Claims 48, 49, 50, 51, 55, 57, 58, 60 and 79-84 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,121,906 to *Hulsh* in view of *Ogino*. Thus, with claim 60 being incorporated into claim 58, the Examiner is essentially asserting that claim 58 is rejected as being obvious over *Hulsh* in view of *Ogino*.

The Examiner asserts that *Hulsh* discloses a neck having a shoulder (14) connecting a first portion to a second portion and the accessory having an assembly skirt (31) that cooperates with a second portion. The Examiner also asserts that the assembly skirt includes a sealing surface (33) that abuts the shoulder when fixed to the neck. With all due respect

to the Examiner, Applicant traverses the Examiner's rejection. Newly amended claim 58 specifically states that the assembly skirt includes a sealing surface that abuts the shoulder when the accessory is affixed to the neck. As described in *Hulsh*, reference 33 refers to a part of the container applicator cap 30, which is flared or skirted outward. (Col. 3, ll. 54-58.) Thus, part 33 provides a lip for anchoring the applicator cover 40 to prevent the latter from falling off of the applicator cap 40 at undesirable times. The part 33 does not function as a sealing skirt.

Moreover, the part 33 does not abut shoulder 14 connecting the first portion and the second portion of the neck. In fact, as shown in FIG. 3 of *Hulsh*, part 33 does not contact the container 10 at all.

Ogino, which is cited for teaching a receptacle containing a cosmetic, also does not illustrate an assembly skirt including a sealing surface that abuts the shoulder connecting the first portion to the second portion. As shown in *Ogino*, the various sealing skirt such as the lower surface of cap 2 and lower surface of cover ring 3 remain apart from the shoulders of which they are adjacent to. Applicant therefore asserts that independent 58 as well as its dependent claims should be patentable over the art cited.

Independent claim 86 is rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,106,742 to *Schultz et al.* The Examiner asserts that *Schultz* discloses an applicator having fixing means. The applicator includes an assembly skirt (29) having a free end (51) and an annular bead (49) displaced from the free end and on an inside surface of the assembly skirt. The Examiner also asserts that the fixing means is situated between the free end of the annular bead.

Independent claim 86 is directed to an applicator. The applicator includes a fixing means for removably affixing the applicator to a neck of a receptacle. Claim 86 has been amended so as to further clarify the invention. With all due respect to the Examiner, Applicant asserts that *Schultz* does not disclose a fixing means for "removably affixing the applicator to a neck of a receptacle."

Once again, the Examiner contends that locking rings 49 and 51 are equivalent to the assembly skirt having a free end and an annular bead as included with claim 86 of the present application. With all due respect to the Examiner, the locking rings 49 and 51 are configured so as to prevent any removal of the applicator 27, as described at column 1, lines 13-14 in *Schultz*. This makes sense since the receptacle of *Schultz* is intended to contain shoe treating liquids and the shoe treating liquids are designed to be disbursed through the applicator during application. *Schultz* specifically describes the rings, 49 and 51 as cooperating with rings 23 and 25 "to hold the actuator assembly connected to the head." Thus, Applicant asserts that the locking rings 49 and 51 are not "fixing means for removably affixing the applicator to the neck of a receptacle." Applicant thus asserts that independent claim 86 as well as its dependent claims should be allowed over *Schultz*.

Claim 85 is rejected under 35 U.S.C. § 103 as being unpatentable over *Ogino*. As discussed previously, claim 85 depends from claim 58, and thus for arguments made previously, Applicant asserts that claim 85 should be deemed allowed.

Claims 53, 54, 61, and 78 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hulsh* in view of *Ogino* as applied to claims 48 and 58 above and further in view of U.S. Patent No. 5,513,763 to *Adams et al.* *Adams* is cited for

teaching a receptacle having a cap that includes an assembly skirt with a sealing surface. The Examiner contends that it would have been obvious to one already skilled in the art at the time the invention was made to modify the assembly skirt of *Hulsh* in view of *Ogino* with the sealing surface including an annular bead as taught by *Adams*. The Examiner also asserts that it would have been an obvious matter of design choice to construct the second fixing means having one snap fastening member, since such matters are well known in the art.

Adams discloses a restricted diameter, symmetrical vertical stretch 13. Below vertical stretch 13 is an enlarged external bead or crown 16 and below the crown 16 is a concave portion 17 which transcends into a generally symmetrical portion 18. The vertical stretch 13 essentially encumbers the entire neck 11 of a bottle. A second vertical stretch 23 extends downwardly from a cap 21 and compresses the first vertical stretch 13 against the bottle. As explained at column 3, lines 59-63 and column 4, lines 12-13 of *Adams*, the sealing of the receptacle described in *Adams* is provided by a foam disc 39 and foam ring 61. The bead 31 is not a sealing bead, but as described at column 3, line 36-40, a locking bead. Therefore, *Adams* is directed toward a totally different structure.

In addition, *Adams* does not include screw threads as disclosed in the various assembly skirts of *Ogino* and *Hulsh*. Applicant therefore asserts that the Examiner has not established a prime facie case of establishing that the two references may be combined. There is no motivation to combine the reference and if one was to combine the entire reference of *Adams*, as is required, one would have to eliminate the various first and second locking portions in *Hulsh* and *Ogino*. Applicant therefore asserts that claim 61 and 78 are patentably distinct

from the art that is cited.

Claim 64-68, 70-72, 74, and 75 are rejected under 35 § U.S.C. 103(a) as being unpatentable over *Hulsh* in view of *Ogino* as being applied to claim 58 and further in view of U.S. Patent No. 6,457,476 to *Elmer et al.* *Elmer* is cited for teaching an applicator having a row of teeth. Regardless, *Elmer* does not satisfy the deficiencies of both *Hulsh* and *Ogino* as applied to claim 58 as discussed above. Applicant therefore assert that based on dependency on claim 58, claims 64-68, 70-72, 74, and 75 should be deemed allowed.

Claim 73 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hulsh* in view of *Ogino* in view of U.S. Patent No. 2,270,529 to *Kirschenbaum*. *Kirschenbaum* is cited for teaching a comb applicator having at least one tooth. Regardless, *Kirschenbaum* does not satisfy the deficiencies of *Hulsh* and *Ogino* as applied to claim 58 as discussed above. Applicant therefore asserts that claim 73 should be deemed allowed.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By

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